

NOT FOR PUBLICATION - FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

United States of America,	)	
	)	
Plaintiff,	)	Crim. No. 1999-21
	)	
v.	)	
	)	
Russell Robinson,	)	
	)	
Defendant.	)	
	)	

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ATTORNEYS:

**Nelson L. Jones, AUSA, Esq.**  
St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Stephen A. Bruschi, Esq.**  
St. Thomas, U.S.V.I.  
*For the defendant.*

ORDER

**WHEREAS** the defendant first raised on appeal the fact that trial counsel for defendant had failed to follow my instruction to redact prejudicial language from a defense exhibit, a radio log (Exhibit D), which I admitted conditioned on such redaction; and

**WHEREAS** the Third Circuit Court of Appeals remanded the case for an evidentiary hearing to determine whether the prejudicial information not redacted from Exhibit D had been read by any juror during deliberations. *See United States v. Robinson*, Crim. App. No. 00-4153 (3d Cir. May 18, 2001); and

**WHEREAS** eleven of the twelve deliberating jurors testified at the evidentiary hearing on December 17, 2001, a majority of whom stated that they had, in fact, read Exhibit D and recalled the unredacted prejudicial information in it; and

**WHEREAS**, based on this evidence and despite the fact that it is error induced solely by the negligence of the defendant's retained trial counsel, I cannot, in good faith, conclude that this prejudicial information did not affect the jury's verdict; accordingly, it is

**ORDERED** that conviction of **Russell Robinson** on the sole count of the indictment, alien smuggling in violation of 8 U.S.C. § 1324(a)(1)(A)(I), is hereby **VACATED**; and it is further

**ORDERED** that this matter shall be set for a new trial at the earliest possible date.

**ENTERED this 28th day of December, 2001.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

By: \_\_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

Hon. G.W. Barnard  
Hon. J.L. Resnick  
Mrs. Jackson  
Nelson L. Jones, Esq.  
Stephen A. Brusck, Esq.  
U.S. Marshal's Office

cc: Hon. R.L. Finch